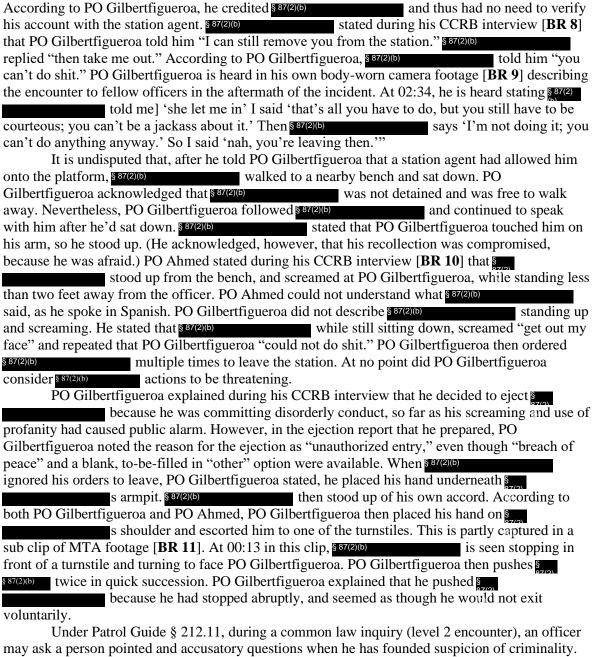
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	▼ For	rce		Discourt.	U.S.
William Rasenberger		Squad #7	202104208	☑ Ab	use		O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Prec	inct:	18 N	lo. SOL	EO SOL
Friday, 07/16/2021 9:00 AM		West 145th Street station	on on the 1 train	3	0	1/1	6/2023	1/16/2023
Date/Time CV Reported		CV Reported At:	How CV Reported:	: Dat	te/Time	Receiv	ved at CCI	RB
Fri, 07/16/2021 11:11 AM		CCRB	On-line website	Fri,	07/16/2	2021 1	1:11 AM	
Complainant/Victim	Type	Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Luven Gilbertfigueroa	09899	938565	030 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Redwan Ahmed	22980	969464	030 PCT					
Officer(s)	Allegatio	on			Inve	stigate	or Recon	nmendation
A.POM Luven Gilbertfigueroa	Abuse: Police Officer Luven Gilbertfigueroa questioned 887(2)(0)							
B.POM Luven Gilbertfigueroa	Abuse: Police Officer Luven Gilbertfigueroa ejected § 87(2)(b) from the transit system.							
C.POM Luven Gilbertfigueroa	Force: Police Officer Luven Gilbertfigueroa used physical force against § 87(2)(b)							
D.POM Luven Gilbertfigueroa	Abuse: Police Officer Luven Gilbertfigueroa made intentionally untruthful testimony against a member of the public in the performance of official police functions.							
§ 87(2)(g), § 87(4-b)								

Case Summary

On July 16 th , 2021, the CCRB received the following complaint from § 87(2)(b)
§ 87(2)(b) [BR 1].
On July 16 th , 2021, at about 9:00 a.m., \$87(2)(b) entered the 145 th Street 1 line
subway station in Manhattan on the downtown side. §87(2)(b) did not have any money
on his MetroCard. Because the MetroCard machines in the station were not working, the station
agent allowed \$87(2)(b) to access the platform through the emergency exit gate. Police Officers Luven Gilbertfigueroa and Redwan Ahmed of the 32 nd Precinct were assigned to a fixed
post on the platform. PO Gilbertfigueroa observed \$87(2)(b) enter through the
emergency exit and asked him why he did not pay for his fare [Allegation A: Abuse of Authority
- Question, \$87(2)(g) After a brief interaction, \$87(2)(g) walked away from the
officer and sat down on a nearby bench. PO Gilbertfigueroa then ordered \$87(2)(5) to
leave the station [Allegation B: Abuse of Authority – Other (Ejection from Transit System),
and escorted \$87(2)(b) to a turnstile. When \$87(2)(b)
stopped just ahead of the turnstile, and turned to face PO Gilbertfigueroa, PO Gilbertfigueroa
pushed him [Allegation C: Force – Physical Force, \$87(2)(2) PO Gilbertfigueroa prepared a
transit ejection report, in which he made intentionally untruthful testimony, indicating that
had entered the transit system without authorization [Allegation D: Abuse of Authority – Untruthful Statement, \$87(2)(g) \$87(4-b)
Authority – Untruthun Statement, 8 87(2)(g). 8 87(2)(g). 8 87(4-0)
The investigation is in possession of six body-worn camera videos [BR 2] and 3 MTA
videos for this case [BR 3, 4, and 5].
Findings and Recommendations
Allegation A: Abuse of Authority – Police Officer Luven Gilbertfigueroa questioned 887(2)(5)
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The subject may refuse to answer questions and is free to walk away. NYPD Patrol Guide § 212.11 [BR 12]

Under NYCRR § 1050.7, no person shall conduct himself in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace. New York Codes, Rules and Regulations § 1050.7 [BR 13].

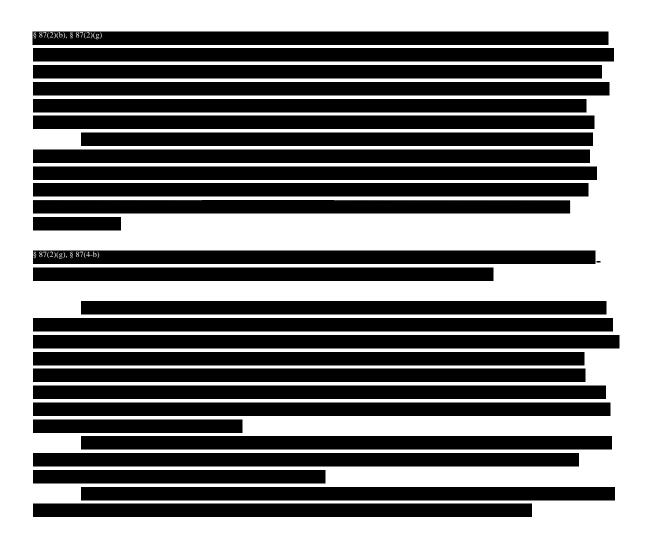
In Matter of Armell N., the facts were as follows. Two police officers observed an individual in a subway car violating a provision of the Transit Authority rules, and directed the individual to comply with the rules. The individual did so. Shortly thereafter, the individual asked one of the officers "what the fuck are you looking at?" The officers decided to eject the individual from the train for being "disorderly and disrespectful," and creating "public alarm." The individual did not comply with the officers' orders to leave. He told them that he would not leave and told them to "go fuck yourself." The officers then forcibly removed the individual from the train. He

was, according to officer testimony, "irate," "cursing and flailing his arms, being disorderly." The officers ejected the individual from the transit system for being disorderly. Although the officers testified that the defendant caused public alarm in cursing at the officers, the court ruled that there was no evidence that the defendant's actions had caused or created the risk of any annoyance, inconvenience, or alarm. Simply making annoying statements to the police, or exhibiting one's frustration with an officer's actions, does not constitute "breach of the peace." The court found that there was no evidence that the defendant committed disorderly conduct under the Transit Authority regulations, and ruled that the officers had illegally ejected the defendant from the transit system *Matter of Armell N.*, 28 Misc. 3d 528 [BR 14].

Under Patrol Guide § 212.20, any person who violates any portion of NYCRR Part 1050 is subject to ejection from New York City Transit facilities. Officers must permit a passenger who shows a willingness to leave to do so without interference. Officers must not use more force than necessary to effect the ejection, if the passenger refuses to leave. (Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to effect the ejection.) NYPD Patrol Guide § 212.20 [BR 15]

Under Patrol Guide § 221.01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide 221.01 [BR 16].

§ 87(2)(b), § 87(2)(g)	
§ 87(2)(b), § 87(2)(g)	
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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which \$87(2)(b) has been a party [BR 18].
- PO Gilbertfigueroa has been a member of service for sixteen years, over which time he has been the subject of one prior complaint and one allegation, which was not substantiated.
 - The investigation is in possession of PO Gilbertfigueroa's summary of employment history [BR 21].

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- According to the New York City Office of Court Administration (OCA), has not been convicted of a crime in New York City [BR 19].
- According to the New York City Comptroller's Office, there are no notices of claim related to this incident [BR 20].

Squad:	_7		
Investigator: _	Will Rasenberger Signature	Inv. Will Rasenberger Print Title & Name	10/06/2021 Date
Squad Leader: _		Manager Vanessa Rosen	October 18, 2021
	Signature	Print Title & Name	Date
Reviewer: _			
	Signature	Print Title & Name	Date